

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Spitzer, Shawn D.

Art Unit: 3636

Serial No.:
10/647,992

Examiner: Garrett, Erika

Attorney Docket No.:
4220-A1C

For: UNIFORM SEAT COVER AND SEAT FASHIONED WITH SAME

REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SIR:

This is a Reply Brief filed in response to the Examiner's
Answer mailed 01 June 2007.

I. STATUS OF THE CLAIMS

1. Claims 1-23 were originally filed in this case.
 Claims 2 and 6-23 were canceled. Claim 1 was
 amended four times. Claims 3-5 were each amended
 once. Claims 1 and 3-5 are pending in this case.

2. A copy of claims 1 and 3-5, the claims on appeal, is
 provided in Claims Appendix A.

3. Claim 1 stands rejected under 35 USC § 103(a) as
 being unpatentable over Takamatsu, U.S. Patent
 4,036,524, in view of Bolewski, U.S. Patent DES.
 365,958.

4. Claims 3-5 stand rejected under 35 USC § 103(a) as
 being unpatentable over Takamatsu, U.S. Patent
 4,036,524, in view of Estes, U.S. Patent 4,694,511.

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claim 1 stands rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Bolewski, U.S. Patent DES. 265,958. The first issue to be resolved in this appeal is, therefore, whether claim 1 is patentable over Takamatsu, U.S. Patent 4,036,524, in view of Bolewski, U.S. Patent DES. 265,958.

Claims 3-5 stand rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511. The second issue to be resolved on appeal is, therefore, whether claims 3-5 are patentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511.

III. ARGUMENT

Issue #1: Whether claim 1 is patentable over Takamatsu, U.S. Patent 4,036,524, in view of Bolewski, U.S. Patent DES. 265,958.

Claim 1 stands rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Bolewski, U.S. Patent DES. 265,958. Appellant again respectfully traverses this rejection.

Independent claim 1

Appellant carefully claims a seat including a seat portion and an attached seat back portion, a top fitted over the seat back portion, a bottom fitted over the seat portion, an engagement assembly detachably engaging the lower end of the top to the rearward end of the bottom, the top supporting first uniform adornment, the bottom supporting second uniform adornment, and the first and second uniform adornments together forming the top and bottom as an identifying uniform of a member of an organization. Appellant carefully claims that the top supports first uniform adornment, that the bottom supports second uniform adornment, and that the first and second uniform adornments together form the top and bottom as an identifying uniform of a member of an organization. The

nature and character of appellant's claimed first and second indicia is carefully limited in that together they constitute the identifying uniform of a member of an organization, according to the principle of the claimed invention. In other words, the first indicia carried by the top and the second indicia carried by the bottom must cooperate together to constitute the identifying uniform of a member of an organization. If the first indicia carried by the top and the second indicia carried by the bottom do not cooperate together to constitute the identifying uniform of a member of an organization, the limitations of appellant's claim 1 are not met.

As to the subject matter specified in claim 1, it is not a matter of design choice as to what a user prefers to put on the cover. The selection of the top supporting first uniform adornment, and the bottom supporting second uniform adornment, and that the first and second uniform adornments carried by the top and bottom constitute the identifying uniform of a member of an organization as claimed is critical to the patentability of the invention as set forth in the claimed combination. Obviously the invention is not directed to a design. Rather, the claimed invention is correctly drawn to top and bottoms fitted over a seat, in which the first and second uniform adornments carried by the top and the bottom,

respectively, together provide the desired function or result of forming the identifying uniform of a member of an organization. The lack of specific structural adornments applied to the top and bottom meeting the claimed criteria of the first and second uniform adornments in the top and bottom of a seat cover applied to a seat portion and a seat back portion of a seat certainly does affect the utility of the invention because unless the first and second uniform adornments form the identifying uniform of a member of an organization the utility and novelty of the invention is not met.

Again, the indicia incorporated with the seat cover in Bolewski do not together form the top and bottom as an identifying uniform of a member of an organization. In Bolewski, the top of the seat cover is formed with the word BASKETBALL associated with indicia indicative of a basketball, and the word FOOTBALL associated with indicia indicative of a football helmet on the front. The bottom of the seat cover in Bolewski is formed with the word HOCKEY associated with indicia indicative of a hockey puck, markings indicative of baseball bats and a baseball cap and a baseball, and the word BASEBALL on the front end. The markings applied to the top of the seat cover in Bolewski identify the sports of football and

basketball, and the markings applied to the bottom of the seat cover in Bolewski identify the sports of hockey and baseball.

Clearly, the subject matter of the markings on the top of the seat cover in Bolewski identify two different sports, which are altogether different from the two different sports identified by the markings applied to the bottom of the seat cover in Bolewski. Accordingly, because the markings applied to the top of the seat cover in Bolewski identify the sports of football and basketball, and the markings applied to the bottom of the seat cover in Bolewski identify the sports of hockey and baseball, the markings applied to the top and bottom of the seat cover in Bolweski cannot and do not cooperate together to form the top and bottom as an identifying uniform of a member of an organization, which renders Bolewski a non-enabling reference as to first and second uniform adornments carried by a top and a bottom, respectively, which together form the top and bottom as an identifying uniform of a member of an organization. Moreover, because the markings applied to the top and bottom of the seat cover in Bolewski do not and cannot cooperate together to form the top and bottom as an identifying uniform of a member of an organization, the seat cover shown in Bolewski is an inoperative or unworkable device.

In view of the fact that Bolweski is not an enabling reference, and that the seat cover in Bolweski is inoperative or unworkable as specified above, the section 103 rejection of 1 as being unpatentable over Takamatsu in view of Bolweski must fail. Moreover, because the markings applied to the top of the seat cover in Bolewski that identify the sports of football and basketball, and the markings applied to the bottom of the seat cover in Bolewski that identify the sports of hockey and baseball, Bolewski teaches squarely away from markings applied to the top and bottom of a seat cover that together form the identifying uniform of a member of an organization, which further renders moot the section 103 rejection of claim 1 as being unpatentable over Takamatsu in view of Bolewski. Finally, regardless of how Bolweski is combined with Takamatsu, the combination of Bolewski with Takamatsu fails to render the claimed invention obvious because the markings applied to the top and bottom of the seat cover in Bolewski fail to form the identifying uniform of a member of an organization as claimed by Appellant, and Bolewski fails to show the need or desire or benefit in providing markings applied to the top and the bottom that would form the identifying uniform of a member of an organization.

Issue #2: Whether claims 3-5 are patentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511.

Claims 3-5 stand rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511. Appellant again respectfully traverses this rejection.

Claims 3-5

Claims 3-5 are each dependent upon a claim that is allowable according to the argument set forth above and, therefore, each of them is allowable, which renders moot the rejection of claims 3-5.

SUMMARY

This Reply Brief is responsive to the Examiner's Answer mailed 1 June 2007. All arguments made in Appellant's Appeal Brief filed 26 March 2007 are maintained.

Pursuant to the foregoing, Appellant believes that the rejection of claim 1 is supported by a faulty analysis of Takamatsu and Bolewski and is quite incorrect, and that the rejection thereof and of the corresponding dependent claims 3-5 are moot and should be withdrawn. Accordingly, any rejection not specifically addressed is not to be construed as an admission that the Examiner's position is correct or agreed upon, or that Appellant concedes the Examiner's position. Quite the contrary, each and every rejection set forth by the Examiner is believed to be based on an entirely incorrect analysis of Takamatsu and Bolewski as explained herein and are respectfully traversed.

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Respectfully submitted,

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